IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

EDMOND ANTHONY PORRATA	§	
VS.	§	CIVIL ACTION NO. 9:15cv103

DIRECTOR, TDCJ-CID

ORDER OVERRULING OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

§

Edmond Anthony Porrata, an inmate confined within the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a prison disciplinary proceeding.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, for consideration pursuant to 28 U.S.C. § 636. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this matter. The Magistrate Judge recommends the petition be denied with prejudice.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Petitioner filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections. After careful consideration, the court is of the opinion the objections are without merit. As petitioner did not lose previously earned good conduct time credits as a result of the disciplinary conviction, he was not entitled to due process of law before receiving the punishment imposed.¹

As punishment for this disciplinary conviction, petitioner was *inter alia*, required to eat food loaf for 7 days. He asserts this constituted cruel and unusual punishment. As petitioner being required to eat food loaf implicated the conditions of his confinement rather than the fact or duration of his confinement, his objection to be this requirement may not be asserted in a habeas action. Petitioner's complaint about being required to eat food loaf has been severed into a separate civil rights action.

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and

conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is

ADOPTED as the opinion of the court. A final judgment shall be entered in accordance with the

recommendation of the Magistrate Judge.

In addition, the court is of the opinion that the petitioner is not entitled to a certificate of

appealability. An appeal from a judgment denying federal habeas relief may not proceed unless a

judge issues a certificate of appealability. See U.S.C. § 2253. The standard that must be met in order

to receive a certificate of appealability requires the petitioner to make a substantial showing of the

denial of a federal constitutional right. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000);

Elizalde v. Dretke, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner

is not requited to demonstrate that he would prevail on the merits. Rather, he need only demonstrate

that the issues are subject to debate among jurists of reason, that a court could resolve the issues in

a different manner, or that the questions presented in the petition are worthy of encouragement to

proceed further. See Slack, 529 U.S. at 483-84. If the petition was dismissed on procedural grounds,

the petitioner must show that jurists of reason would find it debatable: (1) whether the petition raises

a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in

its procedural ruling. Slack, 529 U.S. at 484; Elizalde, 362 F.3d at 328.

In this case, the petitioner has not shown that the issues raised by his claims are subject to

debate among jurists of reason. The factual and legal questions raised have been consistently

resolved adversely to his position and the questions presented are not worthy of encouragement to

proceed further. As a result, a certificate of appealability shall not issue in this matter.

SIGNED this 30th day of August, 2016.

MICHAEL H. SCHNEIDER

UNITED STATES DISTRICT JUDGE

Johan Schnida